IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

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Applicant	:	Paul B. Darcy *et al.*	
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Docket No.	:	MFCP.70154	
Customer No.	:	45809	

Mail Stop Amendment
Commissioner for Patents
P.O. Box 1450
Alexandria, VA 22313-1450

AMENDMENT UNDER 37 C.F.R. § 1.111

Dear Sir:

This is in response to the Non-final Office Action dated March 20, 2006. Reconsideration of the application in view of the following amendments and remarks is respectfully requested.

A listing of the claims begins on page 2 of this paper.

Remarks begin on page 9 of this paper.

Amendments to the Claims:

This listing of claims will replace all prior versions, and listings, of claims in the application:

Listing of Claims

1. (Currently Amended) A method in a computer system for assigning a monetary cost to a computer transaction, the method comprising:

identifying one or more ~~underlying~~ information technology services utilized to execute the computer transaction;

determining a monetary service providing cost associated with the one or more services utilized to execute the transaction, wherein determining the monetary service providing cost comprises,

identifying each resource utilized to provide the one or more services, and

assigning a portion of the monetary service providing cost of each resource to the computer transaction, and;

summing the monetary service providing cost for each resource to determine the monetary cost for the computer transaction in order to pass the monetary cost for the computer transaction to a user executing the computer transaction.

2. (Canceled)

3. (Previously Presented) The method as recited in claim 1, wherein equipment is a utilized resource and the monetary service providing cost includes an equipment cost and wherein the determining step includes calculating the equipment cost

as a percentage of an overall equipment cost for equipment utilized to execute the transaction.

4. (Previously Presented) The method as recited in claim 3, wherein software is a utilized resource and the monetary service providing cost includes a software cost and wherein the determining step includes calculating the software cost as a percentage of an overall software cost for the equipment utilized to execute the transaction.

5. (Previously Presented) The method as recited in claim 4, wherein personnel is a utilized resource and the monetary service providing cost includes a personnel cost and wherein the determining step includes calculating the personnel cost as a percentage of an overall personnel cost for maintaining the software and the equipment utilized to execute the transaction.

6. (Previously Presented) The method as recited in claim 5, wherein a facility is a utilized resource and the monetary service providing cost includes a facility cost and wherein the determining step includes calculating the facility cost as a percentage of an overall facility cost for supporting and housing the equipment and personnel utilized to execute the transaction.

7. (Original) The method as recited in claim 1, wherein the determining step includes determining a cost for a level of quality of the one or more services utilized to execute the transaction.

8. (Original) The method as recited in claim 7, wherein the step of determining a cost for the quality of the service includes determining a cost for the availability of the one or more services.

9. (Previously Presented) The method as recited in claim 8, wherein the availability cost includes an equipment cost and wherein the step of determining a cost for the availability includes calculating the equipment cost as a percentage of an overall equipment cost for equipment utilized to provide the availability of the one or more services.

10. (Original) The method as recited in claim 9, wherein the availability cost includes a software cost and wherein the step of determining a cost for the availability includes calculating the software cost as a percentage of an overall software cost for the equipment utilized to provide the availability of the one or more services.

11. (Original) The method as recited in claim 10, wherein the availability cost includes a personnel cost and wherein the step of determining a cost for the availability includes calculating the personnel cost as a percentage of an overall personnel cost for maintaining the software and the equipment utilized to provide the availability of the one or more services.

12. (Original) The method as recited in claim 11, wherein the availability cost includes a facility cost and wherein the step of determining a cost for the availability includes calculating the facility cost as a percentage of an overall facility cost for

supporting and housing the equipment and personnel utilized to provide the availability of the one or more services.

13. (Previously Presented) The method as recited in claim 7, wherein the step of determining a cost for the quality of the service includes determining a cost of the response time of the one or more services.

14. (Original) The method as recited in claim 13, wherein the response time cost includes an equipment cost and wherein the step of determining a cost for the response time includes calculating the equipment cost as a percentage of an overall equipment cost for equipment utilized to provide the response time of the one or more services.

15. (Original) The method as recited in claim 14, wherein the response time cost includes a software cost and wherein the step of determining a cost for the response time includes calculating the software cost as a percentage of an overall software cost for the equipment utilized to provide the response time of the one or more services.

16. (Original) The method as recited in claim 15, wherein the response time cost includes a personnel cost and wherein the step of determining a cost for the response time includes calculating the personnel cost as a percentage of an overall personnel cost of maintaining the software and the equipment utilized to provide the response time of the one or more services.

17. (Original) The method as recited in claim 16, wherein the response time cost includes a facility cost and wherein the step of determining a cost for the response

time includes calculating the facility cost as a percentage of an overall facility cost for supporting and housing the equipment and personnel utilized to provide the response time of the one or more services.

18. (Previously Presented) The method as recited in claim 1, wherein the determining step includes determining a cost for a level of quality of the one or more services utilized to execute the transaction, the method further including the step of combining the monetary service providing cost and the quality cost to define the monetary computer transaction cost.

19. (Currently Amended) A computer-readable medium having computer-executable instructions ~~capable of~~ performing the steps recited in claim 1.

20. (Currently Amended) A computer system having a processor, an operating system, a memory, the computer system ~~being operable to perform~~ performing the steps recited in claim 1.

Claims 21 – 29 (Canceled)

30. (Previously Presented) A method in a computer system of executing a computer transaction, the method comprising:

requesting, by a user process, execution of a transaction;

receiving, by one or more service processes, the user process request;

executing, by the one or more service processes, the user process request; and

determining, by the one or more service processes, a monetary service provider cost associated with the execution of the transaction as a function of the services utilized

to execute the transaction, wherein determining the monetary service provider cost comprises identifying each resource utilized to provide the service and assigning a portion of the monetary service provider cost of each resource to the computer transaction in order to pass the monetary service provider cost to the user executing the computer transaction.

31. (Canceled)

32. (Previously Presented) The method as recited in claim 30, wherein the determining step includes determining a quality cost of the one or more services associated with the execution of the transaction.

33. (Original) The method as recited in claim 32, wherein the step of determining a quality cost includes determining an availability cost and a response time cost.

34. (Currently Amended) A computer-readable medium having computer-executable instructions ~~capable of~~ performing the steps recited in 30.

35. (Currently Amended) A computer system having a processor, an operating system and a memory, the computer system ~~operable to perform~~ performing the steps recited in claim 30.

Claims 36-42. (Canceled)

43. (Previously Presented) The method of claim 1, further comprising:

identifying a fixed cost resource and attributing a portion of a total monetary service providing cost for the fixed cost resource to the computer transaction, and

identifying variable cost resources and determining a portion of the variable cost resources required to conduct the transaction; and

summing a monetary service providing cost for the fixed cost resource and a monetary service providing cost for the variable cost resource to determine the monetary cost for the computer transaction.

44. (Previously Presented) A system for assigning a monetary cost to a computer transaction requiring provider services, the system comprising:

a service identification component for identifying any services necessary for conducting the computer transaction;

a resource identification component for identifying resources utilized in providing each service; and

a cost assessment component for determining a monetary cost to a provider for each resource and determining the monetary cost for the computer transaction based on a total monetary service provider cost for each utilized resource.

45. (New) The system of claim 44, wherein the resources comprise utilized personnel, software, hardware, facilities and equipment costs that are percentages of an overall personnel, software, hardware, facilities and equipment costs.

REMARKS

Status of Claims

Claims 1, 3-20, 30, 32-35, 43, and 44-45 are pending in this application. Claims 1, 19, 20, 34 and 35 are amended, and new claim 45 is added. Reconsideration of the rejections of all claims and allowance are earnestly solicited in view of the amendments and the following remarks.

Claim Objections

Claims 20 and 35 are objected under 37 C.F.R. 1.75(c), as being of improper dependent form for failing to further limit the subject matter of a previous claim. Claims 20 and 35 are amended to affirmatively indicate the acts associated with the claimed structures. Withdrawal of the objection of claims 20 and 35 are respectfully requested.

Rejections under 35 U.S.C. §112, second paragraph

Claims 1, 19, 20, 34, and 35 were rejected under 35 U.S.C. § 112, second paragraph as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention. This rejection is respectfully traversed.

Claim 1 is amended to remove the "underlying services" language. Applicant changed "underlying" to "information technology," which is specifically defined in Applicant's Specification page 13, lines 15-23. Accordingly, applicant has particularly and distinctly claimed the services utilized by the claimed embodiment, so the 35 U.S.C. § 112, second paragraph rejection of claim 1 should be withdrawn.

Claims 19 and 34 are amended to remove the "capable of" language. Applicant believes this change particularly and distinctly recites claimed acts associated with the claimed instructions. Accordingly, the 35 U.S.C. § 112, second paragraph rejection of claims 19 and 34 should be withdrawn.

Claims 20 and 35 are amended to remove the "being operable to perform" language. Applicant has added "performing" to expressly indicate that the claimed acts are performed by the computer system. Accordingly, applicant has particularly and

distinctly claimed the services utilized by the claimed embodiment, so the 35 U.S.C. § 112, second paragraph rejection of claims 20 and 35 should be withdrawn.

Rejections under 35 U.S.C. §102

Claims 1, 7, 8, 18-20, 30, 32, 34-35, 43 and 44 were rejected under 35 U.S.C. § 102(b) as being anticipated by U.S. Patent No. 6,338,046 to Saari *et al.* This rejection is respectfully traversed.

Applicant respectfully thanks the Office for careful consideration of the record. Applicant notes that Saari was previously distinguished in a previous response dated January 8, 2004. Accordingly, applicant hereby incorporates by reference the distinctions made in the response dated January 8, 2004.

As indicated in the response dated January 8, 2004, with respect to claims 1, 19 and 20, Saari fails to disclose several of the claimed features including "identifying one or more information technology services utilized to execute the computer transaction and determining a providing cost associated with the one or more services utilized to execute the transaction." Saari also fails to disclose determining the providing cost associated with the transaction by identifying each resource utilized to provide the one or more services and assigning a portion of the providing cost of each resource to the computer transaction. Saari further fails to disclose summing the providing cost for each resource to determine a providing cost for the computer transaction.

Saari discloses a technique for determining charges for use of a network service connection. The technique of Saari allows independent network operators 22 at different locations 24 to combine charges. In column 4, lines 31-35, Saari provides a laundry list of possible charging formulae including "service class type, quality of service, any individual or combination of ATM parameters, connection time, and other traffic flow parameters." Each operator sends a billing cell 31 and a billing unit at each node 24 can calculate the charges. The billing cell 31 may contain a header 36, address information 25, and connection information 38. See Column 5, lines 11-22 of Saari. The connection information 38 may include class of service, cell loss ratio, maximum peak rate, and level of service. See Column 5, lines 60-67 of Saari.

Saari is not concerned with identifying a cost associated with the individual underlying resources necessary for providing a service. Saari merely identifies parameters of the service itself, such as "connection time" or "quality". As further set forth in the dependent claims, the resources include such items as facilities, equipment, and personnel. Saari is not concerned with identifying these resources and additionally is not concerned with determining a cost associated with each resource in order to assign a portion of the cost to each computer transaction as defined in claims 1, 19 and 20.

Whereas claims 1, 19 and 20 are concerned with identifying the cost of resources utilized to provide a service, the disclosure of Saari is concerned only with the service costs themselves and the passing along of the service costs to different network operators. Accordingly, as set forth above, Saari fails to disclose determining the provider cost associated with the transaction by identifying each resource utilized to provide the one or more services, and assigning a portion of the providing cost of each resource to the computer transaction. Accordingly, Saari fails to anticipate claims 1, 19 and 20, so the 35 U.S.C. § 102(e) rejection claims 1, 19 and 20 should be withdrawn.

Claims 7, 8, 18 and 43 depend from claim 1 and further define novel features of the claimed invention. Accordingly, claims 7, 8, 18 and 43 are allowable by virtue of their dependence on claim 1.

With regard to claims 30, 34 and 35, Saari fails to disclose a method in a computer system of executing a computer transaction, comprising determining, by the one or more service processes, a provider cost associated with the execution of the transaction as a function of the services utilized to execute the transaction. Saari further fails to disclose identifying each resource utilized to provide the service and assigning a portion of the provider cost of each resource to the computer transaction.

The Office Action contends that Saari, column 2, lines 1-20 and column 7, lines 20-27 discloses the claimed resource identification. Applicant respectfully disagrees. Saari, column 2, lines 1-20 discloses charging for connection usage, where a billing messages is transmitted to each node along a connection or transfer path between a source and destination, and each node provides a cost, which is totaled to calculate the total cost associated with the connection. Saari, column 7, lines 20-27 further discloses

that the calculation of the total cost may be performed by a network billing system, after each node applies a charging strategy unique to an operator of the utilized nodes. In column 7, lines 1-5, Saari clarifies that acquired unprocessed billing information that is transmitted to the network billing system to compute charges associated with the connection. Saari, column 14, lines 50-55 discloses that if a user is not satisfied with the performance of a connection that the user may change parameters of the ATM service agreement or change network operators. Additionally, in column 25, lines 10-40, Saari details considerations that determine whether the connections costs are reasonable based on the QOS and priority levels associated with the data transferred over the connection.

Nothing in Saari mentions the claimed identification of resources associated with the services utilized to execute a computer transaction. At best, Saari, column 9, lines 50-55, discloses a resource management cell that provides traffic information to a source computer, where a total cost of a connection is computed based on cost associated with nodes along the connection path. Saari, column 7, lines 30-35, calculates the connection cost based on the network class or the amount of data being transferred. Unlike Saari, the claimed embodiment determines a monetary service provider cost by identifying each resource utilized to provide a service and assigning a portion of the monetary service provider cost of each resource to the computer transaction in order to pass the monetary service provider cost to the user executing the computer transaction. Accordingly, Saari fails to anticipate claims 30, 34, and 35, so the 35 U.S.C. § 102(e) rejection claims 30, 34 and 35 should be withdrawn.

Claim 32 depends from claim 30 and further defines novel features of the claimed invention. Accordingly, claim 32 is allowable by virtue of its dependence on claim 30.

With respect to claim 44, Saari fails to disclose "a resource identification component for identifying resources utilized in providing each service, and a cost assessment component for determining a monetary cost to a provider for each resource and determining the monetary cost for the computer transaction based on a total monetary service provider cost for each utilized resource."

The Office Action contends that Saari column 1, lines 1-20, and columns 7, lines 20-27 discloses the claimed resource identification component. The Office Action

further contends that the same portions of Saari disclose the claimed cost assessment component. Applicant respectfully disagrees. As discussed above, the cited portions of Saari fail to provide identification of resources utilized to provide one or more service when calculating the cost of executing a computer transaction that utilized one or more services.

Unlike Saari, claimed embodiments identify resources utilized to provide a service and calculate a total cost of a transaction based on the resources associated with the services. For the reasons set forth above, applicants respectfully that claim 44 is allowable over the art of record. Accordingly, withdrawal of the 35 U.S.C. §102 rejection of claim 44 is respectfully requested.

New claim 45 depends on claim 44 and further define novel features of the claimed invention. Accordingly claims 45 is allowable at least by virtue of its dependence on claim 44.

Rejections under 35 U.S.C. §103

Claims 3, 13 and 33 were rejected under 35 U.S.C. §103(a) as being unpatentable over Saari *et al.* This rejection is respectfully traversed.

With respect to claim 3, Saari fails to disclose the limitation of claim 1, "wherein equipment is a utilized resource and the monetary service providing cost includes an equipment cost and wherein the determining step include calculating the equipment cost as a percentage of a overall equipment cost for equipment utilized to execute the transaction."

The Office Action concedes that Saari fails to disclose calculating the equipment cost as a percentage of an overall equipment cost for equipment utilized to execute the transaction. The Office Action then cites Saari, column 4, lines 18-29 for disclosing a number of service factors which impact connection costs. Saari disclose that factors include service class type, quality of service, ATM traffic parameters, connection time, and other traffic flow parameters.

Unlike Saari, the claimed embodiment utilizes equipment costs to determine the cost of the transaction. The charging strategies disclosed by Saari fail to take into consideration the cost of the equipment utilized to deliver the services. Contrary to the

claimed embodiment, the charging strategies disclosed by Saari and utilized by network operators only consider traffic flow factors when determining connection costs.

A prima facie case of obviousness requires (1) some suggestion or motivation, either in the references themselves or in the knowledge generally available to one of ordinary skill in the art, to modify the reference or to combine reference teachings; (2) there must be a reasonable expectation of success; and (3) the prior art reference (or references when combined) must teach or suggest all the claim limitations. MPEP § 2142 (2005).

Here, the prior art references when combined fails to suggest or teach all of the claimed limitations. The Office Action attempts to utilize a general statement about service factors to support a conclusion that this suggests the specifically claimed limitation of calculating equipment costs as a percentage of and overall equipment cost. Nothing in Saari mentions or suggest equipment costs nor is there a disclosure of determining a percentage of an overall equipment cost. Because Saari fails to adequately suggest the claimed limitations, the 35 U.S.C. § 103 rejection of claim 3 should be withdrawn.

With respect to claims 13 and 33, Saari fails to disclose determining a cost for the quality of service includes determining a cost of the response time of the one or more service and availability cost.

The Office Action cites Saari column 4, lines 18-35, column 9, lines 2-26 and 46-55 for disclosing determining a quality of service cost includes determining an availability cost. Applicants respectfully disagree. Saari column 4, lines 30-35 expressly indicates that possible factors that may be used **as variables** within usage charging **formulae** include service class type, quality of service, etc. Saari, in column 9, lines 2-26, discloses various service categories, such as CBR, rt-VBR, nrt-VBR, UBR and ABR. Saari, in column 7, lines 35-45, further discloses that if the amount of data to be sent over the network can be categorized as belonging to a pre-defined class which results in the transfer of small quantities of data a fixed cost approach is utilized, where the magnitude to the fixed cost depends on the level of service or amount of data.

Nothing in Saari discloses determining a cost of a quality of service includes determining an availability cost. At best, Saari discloses utilizing a level of service or amount of data transmitted to determine the fixed cost for an transaction. Unlike Saari, the claimed embodiment determines the cost of the transaction by identifying the services associated with a transaction and calculating the availability cost of the services.

Also, the Office Action concedes that Saari fails to disclose determining a cost for the quality of service includes determining a cost of the response time of the one or more services. But the Office Action argues that Saari suggests a cost of the response time of the one or more services. Applicants respectfully disagree.

A prima facie case of obviousness requires the prior art reference (or references when combined) must teach or suggest all the claim limitations.

Here, the prior art references when combined fails to suggest or teach all of the claimed limitations. There is no suggestion that the cost of the quality of service includes calculating a cost of the response time of the one or more services. Saari column 5, lines 55-65 discloses connection information carried by the billing message includes general service expectations for the user. These general service expectations are not the cost of the response time of the one or more services. Rather, the costs are based on the amount of data transferred over the connection as indicated in column 7, lines 30-45. Accordingly, the prior art reference does not teach determining a cost of the response time of the one or more services. Because Saari fails to adequately suggest the claimed limitations, the 35 U.S.C. § 103 rejection of claims 13 and 33 should be withdrawn.

Claims 4-6, 9-12 and 14-17 were rejected under 35 U.S.C. §103(a) as being unpatentable over Saari *et al.* in view of Ginter *et al.*, U.S. Publication No. 2005/0060584 A1. This rejection is respectfully traversed.

With respect to claims 4-6, 9-12 and 14-17, Saari and Ginter fail to disclose, among other things, software cost, facility costs, equipment cost, and personnel cost calculated as a percentage of an overall software, facility, equipment and personnel cost.

The Office action concedes that Saari fails to disclose the claimed cost calculations. The Office Action cites Ginter, paragraph 0637, to teach or suggest the missing claimed requirements. Applicants respectfully disagree. The cited portion

discloses equipment cost depreciate over time and that load differences may create savings in electricity, personnel or maintenance. The cited portions do not teach or suggest calculating software cost, facility costs, equipment cost, and personnel cost calculated as a percentage of an overall software, facility, equipment and personnel cost. Rather the cited portions suggests that equipment cost and related costs change based on load or depreciate over time.

Unlike Saari and Ginter, the claimed embodiment require software, facility, equipment and personnel costs that are calculated as percentages of overall software, facility, equipment and personnel costs. Neither Saari of Ginter teaches the claimed requirements of claims 4-6, 9-12 and 14-17. Accordingly, withdrawal of the 35 U.S.C. §103 rejection of claims 4-6, 9-12 and 14-17is respectfully requested.

CONCLUSION

As set forth above, applicants respectfully submit that all pending claims are in condition for allowance. Applicants respectfully request that this application be allowed and passed to issue. Should, however, any issues remain prior to issuance of this application, the Examiner is urged to contact the undersigned to resolve the same. The Commissioner is hereby authorized to charge any additional amount required, or credit any overpayment, to Deposit Account No. 19-2112 referencing Attorney Docket No. MFCP.70154.

Respectfully submitted,

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